

Unless an exemption is documented, the sale and delivery of tangible personal property to an Illinois customer creates a legal presumption that the sale is for use in Illinois and subject to tax. See 86 Ill. Adm. Code 130.1405. (This is a GIL.)

May 16, 2007

Dear Xxxxx:

This letter is in response to your letter dated December 1, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I have a client who is in the manufacturing business of portable restrooms. He starts with a basic trailer tractor and then builds extremely nice double and triple restroom facilities on the trailer. Once these restrooms are completed he sells them to various organizations. Most of the time it is to public municipalities such as park districts or forest preserve districts.

The question we have is on the sales taxability of purchasing the trailers. We have an Illinois resale and sales tax number, but our vender insists that this purchase is subject to us paying sales tax. One reason he insists is that we were not a dealer of trailers at the time of purchase. (At this time we just became a dealer anyway.)

Would you kindly clarify the answer on the taxability of our transaction. Is the fact that we buy all items for resale good enough not to be charged sales tax in these circumstances. Is the fact that we were not a dealer in trailers at the time of the purchase exclude us from being exempt from paying sales tax no matter what the usage of the material is for. There is a great amount of money at stake based on your answer.

Thank you in advance for your prompt answers to my questions.

DEPARTMENT'S RESPONSE

When an Illinois retailer sells tangible personal property and delivers it in Illinois, sales tax is due unless an exemption can be documented. The resale exemption is applicable when making sales to a purchaser who will in turn sell the tangible personal property. See 86 Ill. Adm. Code 130.1405.

Except in the case of sales to totally exempt purchasers, when sales for resale are made, sellers should, for their protection, take a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. Certificates of Resale may be made a part of purchase orders signed by the purchaser. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (i.e., it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above stated conditions are met. The retailer's obligation with respect to Certificates of Resale is found at 86 Ill. Admin. Code 130.1401 and 130.1405. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois.

Retailers cannot be forced to accept Certificates of Resale. However, as discussed above, a properly executed Certificate of Resale will generally document that the sale by the retailer is a nontaxable sale for resale.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
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